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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,679	05/15/2001	Ulrich Reiners	K&W 305-WCG	8692

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EXAMINER
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CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/30/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	REINERS ET AL.
09/763,679	
Examiner	Art Unit
Victor S Chang	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-17 and 19-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-17 and 19-21 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,7.      6) Other: \_\_\_\_\_.  
 7) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, the term “basis” is vague and indefinite, the Examiner suggests replace it with --base--; in lines 4 and 5, the Examiner suggests replace the phrase “based on” with --comprising--; also in line 4 and throughout the other dependent claims, delete the “)” after layer identification letter, e.g., change A) to --A--.

Additionally, it is noted that in claim 1 the layers C, D, E and G are optional. The Applicants should be noted that an election of species might be required.

In claim 6, line 2, the phrase “main monomer” is vague and indefinite. It is not clear to the Examiner the scope of “main monomer”.

Again, regarding claims 9-11, Applicants are reminded that layer G in claim 1 is optional.

Claims 15 and 16 are duplicates to each other, it is not clear to the Examiner how the scopes of these claims ~~not~~ differ.

Although claim 17 appears to provide additional structure of a "tray" in the preamble, it is not clear to the Examiner how claim 17 being distinct from claims 15 and 16.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 6132539).

Laurent's invention is directed to a laminate comprising a polyolefin foam layer which is laminated to a sealing film having at least a first layer of a polyolefin. During the lamination a second layer is located between the first layer and the foam layer; the second layer is extruded therebetween and pressure is immediately applied. The second layer and the first layer are polyolefins each based on the same monomer as the main monomer of the foam layer (Abstract). Laurent also teaches that polypropylene foam layer is suitable for producing thermoformable laminate trays for food packaging (column 1, lines 12-15). Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing the stiffness, as protection of the foam surface and/or as gas and aroma barrier. Usually the coating film carries on its surface facing away from the foam layer a sealing layer

(column 1, lines 27-32). Fig. 3 shows a cross section of the packaging laminate which consists of the three basic components: a coating film A, a foam layer B and a bonding layer 30 (column 4, lines 5-9). Further, the five-layer coating film A shown in Fig. 3 consists of a barrier layer 11 made e.g. of ethylene-vinyl-alcohol-copolymer, adhesive layers 12 and 13 on either side of the barrier layer 11, a bonding layer 14 facing the extruded further bonding layer 30 and a sealing layer 15 (e.g. low density polyethylene) or peelable polyethylene (column 4, lines 10-15). Advantageous thicknesses for the different layers in the packaging material as shown in Fig. 3 are: sealing layer 15: 10-50  $\mu$ , adhesive layers 12 and 13: 3-5  $\mu$ , barrier layer 11: up to 10  $\mu$ , bonding layer 14: 5-15  $\mu$ , extruded further bonding layer 30: 5 to 30  $\mu$ , and foam layer B: 0.5-2 mm.

For claims 1-17 and 21, it is noted that Laurent teaches all the features of the instant claimed invention, except an express teaching of the range of thickness ratio between foam layer B and bonding layer 30. However, it is believed that adjusting the thickness ratio between these layers are within the ordinary skill of the art, motivated to provide suitable mechanical properties, such as stiffness, to the thermoformed tray, as taught by Laurent. Additionally, it should be noted that layers C, D, E and G are optional, and the exemplified total thickness of corresponding layers 11-15 of Laurent's multilayer film is in the range of 31-85  $\mu$ , as shown above.

The method claims 19 and 20 essentially employ only clearly conventional method steps, and as such are rejected.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC

VSC

January 28, 2003

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 1300-  
1700

*Daniel Zirker*